IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 16, 2008 Session

WILLIAM DAVID MCLARTY v. WILMA WALKER

Appeal from the Chancery Court for Roane County
No. 15485 Frank V. Williams, III, Chancellor

No. E2008-00206-COA-R3-CV - FILED NOVEMBER 13, 2008

William David McLarty ("Plaintiff") sued an adjoining property owner, Wilma Walker ("Defendant"), concerning a joint driveway seeking, among other things, a restraining order prohibiting Defendant and her tenants from trespassing on Plaintiff's property and prohibiting Defendant and her tenants from interfering with construction of a fence Plaintiff proposed to build. The Trial Court entered an Agreed Temporary Order on March 10, 2006, that, *inter alia*, prohibited and restrained Defendant, her tenants, guests, and invitees from using the joint driveway except to access the rear of Defendant's property and from encroaching on Plaintiff's property. Plaintiff later filed a Motion for Contempt alleging that Defendant was in violation of the Agreed Temporary Order. After a trial, the Trial Court entered an Order finding and holding, *inter alia*, that Defendant was in contempt of the Agreed Temporary Order, and awarding Plaintiff $2,000 for the violations. Defendant appeals to this Court. We hold that the Agreed Temporary Order was not sufficiently clear to give Defendant notice that she would be held liable if her tenants violated the order. We, therefore, vacate the Trial Court's January 4, 2008 order and remand with instructions to enter an order that comports with our Opinion and the Supreme Court's Opinion in *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346 (Tenn. 2008).

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Greg Leffew, Rockwood, Tennessee for the Appellant, Wilma Walker.

James S. Smith, Jr., Rockwood, Tennessee for the Appellee, William David McLarty.

OPINION

Background

Plaintiff owns and lives at property located at 116 North Kingston Avenue in Rockwood, Tennessee. Defendant owns adjoining property at 120 North Kingston Avenue, and the two properties share a driveway. Defendant uses her property as rental apartments. Issues arose regarding the use of the shared driveway, and Plaintiff filed suit seeking, among other things, a restraining order prohibiting Defendant and her tenants from trespassing on Plaintiff's property and prohibiting Defendant and her tenants from interfering with construction of a fence that Plaintiff proposed to build.

The Trial Court entered an Agreed Temporary Order on March 10, 2006 finding and holding, *inter alia*:

> And whereas it further appears to the Court that the parties have announced, through counsel that they have agreed, pending final hearing in this matter, that the Defendant, her tenants, guests and business or other invitees at the 120 North Kingston Avenue premises should be prohibited and restrained from any use of the driveway which is the subject of this lawsuit except to access the rear of the property from Kingston Avenue and should be further prohibited from otherwise encroaching on the property of the Plaintiff in any fashion.
>
> ACCORDINGLY, IT IS HEREBY ORDERED BY THE COURT THAT THE DEFENDANT, HER TENANTS, THEIR GUESTS OR OTHER INVITEES AT THE 120 NORTH KINGSTON AVENUE PROPERTY ARE HEREBY PROHIBITED AND RESTRAINED FROM TRESPASSING OR ENCROACHING ON THE PLAINTIFF'S PROPERTY PROVIDED HOWEVER THAT THEY MAY CONTINUE TO USE THE DRIVEWAY BETWEEN THE PROPERTIES AT 120 NORTH KINGSTON AVENUE AND 116 NORTH KINGSTON AVENUE TO ACCESS THE REAR OF THE 120 NORTH KINGSTON AVENUE LOT FROM KINGSTON AVENUE. THIS PROHIBITION SHALL INCLUDE PARKING DIRECTLY IN THE DRIVEWAY OR OTHERWISE OBSTRUCTING IT. PLAINTIFF WILL ALSO NOT BLOCK THE DRIVEWAY PENDING FURTHER HEARING.

On June 7, 2006, Plaintiff filed a Motion for Contempt and Sanctions alleging, in part:

> Since the Court signed the Order on March 10, Defendant's tenants, invitees or guests at the 120 North Kingston Avenue property have, apparently at the instruction of the Defendant, contemptuously violated the said Order numerous times, sixteen (16) instances in April documented by Plaintiff and fourteen (14) more in May documented by Plaintiff. This is willful and blatant contempt of Court and should be dealt with on the severest terms possible.

The case proceeded to trial without a jury, and the issue of the alleged contempt was tried along with other pending issues.

Plaintiff, who was a police officer in Atlanta before moving to Tennessee, testified at trial that he has lived at 116 North Kingston Avenue for four years. He testified that he and his family began having problems regarding the driveway:

> within weeks of actually purchasing the property, we noticed the constant transgressions.…We bought the house in September of '02. And moving up here from Atlanta, it took us a year or so to sell the house in Atlanta. Every time we would come up to work on the house, there would normally be someone parked in our parking area.

Plaintiff explained:

> where the driveway actually splits, there's an area on each separate piece of property for pretty much two cars to park without blocking it.
>
> We would come in and there would be someone parked in our area.…A car would be parked there, using it as, basically, overflow parking for the apartments. We'd get them to move. You know, quite often, when we wanted to get out, we had to go bang on the door, get somebody to move to let us out, because they would be parked all the way down the driveway.…[I]f people had difficulty getting out, they would simply drive through our front yard.…We attempted to come up with something that would attempt to reinforce in the tenants' minds that our front yard wasn't their parking lot. So we got out and planted grass up all the way to the concrete and, you know, put some little stakes in the yard to try to keep them off the grass. They were run down within hours.
>
> We erected a small cast iron fence. You know, one of the little ones that's only a foot, foot and a half tall. That was first hit within hours, and within a matter of a day, it was heavily damaged, and within a matter of a week or two, it was totally destroyed.…So we planted trees there to try to keep them out of our yard, and put rebar stakes up to hold the new trees. Boom, the stakes are completely run down.
>
> It's not just a daytime thing. People would park their car there at night for hours.
>
> But after I withdrew permission for them to use it, I placed a no trespassing sign in the front yard. It gets run down, and it's made out of one-inch steel.

Plaintiff further testified:

> Several times, I have - - … - - walked out the back door and there would be people in my backyard. And upon confronting them, they were simply cutting through my

> yard.…They would simply be cutting through to visit tenants in the apartment complex. These are people that my experience said were dangerous people.

Plaintiff also testified that "it averages once or twice a year that the police are there hauling someone out in handcuffs [from Defendant's property]."

Plaintiff "documented on videotape in excess of 150 violations of that restraining order" that have occurred since the Agreed Temporary Order was entered. Plaintiff introduced videotapes at trial showing the alleged violations including one in which someone pulled into Plaintiff's parking area to work on a toy car. Plaintiff testified that while they worked on the car these people were approximately eight feet from Plaintiff's back door. When asked, Plaintiff admitted that he has not had any discussions with Defendant since the Agreed Temporary Order was entered.

When asked if he knew of any other way to deal with the situation other than his proposed fence, Plaintiff stated:

> I assume that each and every violation, I could call the Rockwood Police Department and have them come out. I can't see me having to call the police three or four times a week. I don't want to get into the situation of the boy who cried wolf. I'd like to have them come when I need them. To have them out each and every time, would be insanity and a poor use of police resources.
>
> I could attempt to forcibly eject trespassers from my property. I understand that's the local custom. But that makes no sense, and you're getting into a situation that could very easily escalate into violence.

Plaintiff testified that he wants to build the fence "to protect my family.…I'm asking the Court to tell me where I can build a fence to protect my property and my family."

Plaintiff testified that he solved his access problems by building a driveway in the back of his property and that there is room for a driveway in the back of Defendant's property too. Also, Plaintiff testified that there is an alley behind Defendant's apartment house and forty feet on the other side of the house.

Plaintiff's Wife testified at trial. She and Plaintiff have a seventeen year old daughter and a twelve year old son. Plaintiff's Wife testified that there have been incidents that have caused her fear stating:

> There was an incident in which my husband was out of town for a couple of days and I was home alone. And our bedroom is right next to the driveway. And about 11:00, I was laying there reading, and I heard a door slam and people screaming, and distinctly heard a man yelling, "I'm going to kill you."

She stated that the noise from this incident came from the back apartments. She also testified about another incident stating:

> There was, again, another case where my husband had left the house to run some errands, and the occupants of the back apartments, when they saw David leave, decided that they were going to move their truck into the neutral zone in front of our house. And so I stepped outside and informed the gentleman that he was not allowed to park there. And after some argument, I told him that I would call the cops, and he finally moved it back onto Ms. Walker's property, but then he said some rather nasty, disgusting things concerning me.

Plaintiff's Wife stated that the exchange with this man understandably caused her fear.

Plaintiff's Wife testified that before the entry of the Agreed Temporary Order, she called Defendant on one occasion regarding workmen who were blocking the driveway. Plaintiff's Wife stated that Defendant came to the property and had the workmen move their vehicle. Plaintiff's Wife has not spoken to Defendant since the entry of the Agreed Temporary Order.

Defendant testified that she and her late husband purchased the property at 120 North Kingston Avenue in 1981, sold it a few years later, and regained possession again when the woman who bought it signed it back over to them. Defendant has never lived at 120 North Kingston Avenue. Instead, Defendant rents out four apartments there.

Defendant was asked what she tells her tenants about parking and she stated: "I told them they can park in front of the house that is graveled, and there's a parking space there for six cars, it's slant park. Then the back - - the downstairs back apartment, I've told them they could park at the back and not to block the driveway." She further stated: "I did tell - - and I tell them now, they do not have permission to park in the driveway. They can park in front of the house, and they do have permission to come back where it splits into a Y and park there." Defendant testified: "I give my tenants instructions not to park in the driveway. And, as far as I know, they are not parking in the driveway." Defendant testified that Plaintiff and his wife have called her only one time requesting that she ask someone to move and that she promptly went over to 120 North Kingston Avenue and asked the workmen to move their vehicle.

Defendant testified that she knows her tenants personally. Defendant watched the videotape shown by Plaintiff at trial and stated that she did not recognize the man shown on the tape. When told that the man on the videotape was Benji Willis, Defendant stated that she knew Benji Willis and that he used to be one of her tenants.

Defendant admitted that there have been two occasions when police have come to 120 North Kingston Avenue and arrested people. She stated: "one was domestic violence and the people moved right then" and "the other one was someone that violated parole and the police came and got him, and they never came back."

When asked about potential access to 120 North Kingston Avenue through the alley in the back, Defendant stated: "It's a very steep property, and it would be difficult for some tenants to get in and out. [Plaintiff] and [Plaintiff's Wife] are young and agile and they can move in and out, and the steepness doesn't bother them. It would some people." Defendant testified that she never has considered putting a driveway on the other side of the house.

After trial, the Trial Court entered an order on January 4, 2008 finding and holding, *inter alia*:

> the parties both have an easement for ingress and egress over the concrete driveway which traverses a portion of the line between the parties and has been in common usage for many years. Both parties have the right to use the actual concrete driveway where it leaves Kingston Avenue and continues along the property line, provided that the Plaintiff may erect a fence along the edge of the actual concrete on his property and may encroach onto the concrete driveway with a fence in a manner such that the total width of the existing concrete available to Defendant for ingress and egress is never less than the existing concrete at its narrowest point. The Court further finds that the survey attached hereto as Appendix A by Carter Land Surveying dated February 25, 2004, is accurate and correct and accurately depicts the driveway in question.
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> IT IS THEREFORE ORDERED BY THE COURT:
> 1. THAT EACH OF THE PARTIES TO THIS ACTION SHALL HAVE A CONTINUING EASEMENT FOR INGRESS AND EGRESS ALONG THE EXISTING CONCRETE DRIVEWAY SHOWN ON THE SURVEY ATTACHED HERETO AS APPENDIX A AND, INDEED, COINCIDING WITH SAID EXISTING DRIVEWAY PROVIDED THAT PLAINTIFF MAY ERECT A FENCE ALONG THE EDGE OF THE EXISTING CONCRETE ON HIS PROPERTY AND MAY ENCROACH ON THE CONCRETE DRIVEWAY WHERE IT WIDENS IN SUCH A MANNER SO THAT THE TOTAL OF EXISTING CONCRETE AVAILABLE TO DEFENDANT FOR INGRESS AND EGRESS IS NEVER LESS THAN THE NARROWEST POINT OF THE EXISTING CONCRETE DRIVEWAY.
> 2. IT IS FURTHER ORDERED THAT THE SAID EASEMENT FOR INGRESS AND EGRESS IN FAVOR OF BOTH PARTIES, AND EACH OF THEM, IS SUBJECT TO THE LIMITATIONS OF A RESTRAINING ORDER WHICH IS A PART OF THE FILE IN THIS CAUSE AND THE CONDITIONS OF WHICH ARE DEFINED BY SEPARATE ORDER IN THIS MATTER;….
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> * * *
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> The Court further finds that there can be no fence built in the middle of the driveway but that the Plaintiff may erect a fence along the edge of the concrete driveway toward his house provided that as the driveway widens, he may encroach upon the concrete driveway until he reaches his property line in a manner that does not

diminish the width of the concrete driveway available to the Defendant below the width of the actual concrete driveway at its narrowest point. The Court finds that the parties have stipulated that the survey introduced by Plaintiff is correct and accurate.

The Court finds, with regard to the issue of contempt, that the Defendant is in fact guilty of contempt and the Court fixes the number of instances of contempt at forty (40) and fixes the penalty for each violation the amount of Fifty Dollars ($50.00) and finds therefore that the Plaintiff should have a judgment against the Defendant in the amount of $2,000.00 for contempt violations. The Court further finds that the agreed Restraining Order heretofore entered prohibiting the parties from blocking the driveway should be made permanent in its entirety and should be incorporated in this Order by reference, and that future violations may be dealt with more severly (sic), i.e. the penalty may increase progressively. The Court further finds that vehicles must be in motion at all times on the common part of the driveway in order to avoid violation of the said agreed Order except that in the event the Plaintiffs do gate their property they should be allowed reasonable time to stop and open the gate before moving out of the common area, and in the event that the vehicle from either property is backing out or pulling out onto Kingston Avenue they should be allowed a reasonable time to enter the traffic on Kingston Avenue safely. The Court further finds that any use of the common area, i.e. the City property in front of the [Plaintiff's] residence as parking by the Defendant, her tenants or their invitees will be considered a violation of the Order. The Court finds that since the Defendant is in fact an absentee landlord, that makes it all the more important that she control her tenants, their guests and their invitees regarding driveway and parking issues addressed herein.…

* * *

3. IT IS FURTHER ORDERED THAT THE PLAINTIFF IS AWARDED JUDGMENT AGAINST THE DEFENDANT IN THE AMOUNT OF $2,000.00, FOR THE REASONS HEREIN ABOVE SET OUT;

4. IT IS FURTHER ORDERED THAT THE AGREED RESTRAINING ORDER HERETOFORE ENTERED BY THE COURT IS HEREBY INCORPORATED BY REFERENCE AS IF HEREIN SET OUT IN FULL AND THAT THE COURT DEFINES A VIOLATION WITH REGARD TO BLOCKING THE DRIVEWAY AS FAILURE TO KEEP THE VEHICLE MOVING AT ALL TIMES EXCEPT THAT EITHER PARTY MAY PAUSE A REASONABLE TIME AS NECESSARY TO ENTER THE TRAFFIC ON KINGSTON AVENUE AND THE PLAINTIFF MAY PAUSE A REASONABLE TIME, IF NECESSARY, TO OPEN ANY GATE WHICH HE MAY ERECT ON THE DRIVEWAY AS HEREIN PROVIDED; THE COURT FURTHER DEFINES VIOLATION AS ANY PARKING BY THE DEFENDANT, HER TENANTS, GUESTS, AGENTS OR INVITEES ON THE COMMON AREA, I.E. THE CITY PROPERTY IN FRONT OF THE [PLAINTIFF'S] RESIDENCE.…

Defendant appeals to this Court.

Discussion

Although not stated exactly as such, Defendant raises three issues on appeal: 1) whether the Trial Court erred in holding Defendant in contempt of the Agreed Temporary Order; 2) whether the Trial Court erred in allowing Plaintiff to stop his vehicle in the driveway to open a gate should Plaintiff erect a fence when the Trial Court held that the joint easement was for the movement of vehicles only; and, 3) whether the Trial Court erred in prohibiting Defendant's tenants from parking on property owned by the City in front of Plaintiff's house.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We first address whether the Trial Court erred in holding Defendant in contempt of the Agreed Temporary Order. As our Supreme Court recently instructed in *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*:

> Civil contempt claims based upon an alleged disobedience of a court order have four essential elements. First, the order alleged to have been violated must be "lawful." Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person's violation of the order must be "willful."
>
> The threshold issue in any contempt proceeding is whether the order alleged to have been violated is "lawful." A lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties. *Vanvabry v. Staton*, 88 Tenn. 334, 351-52, 12 S.W. 786, 791 (1890); *Churchwell v. Callens*, 36 Tenn. App. 119, 131, 252 S.W.2d 131, 136-37 (1952). An order is not rendered void or unlawful simply because it is erroneous or subject to reversal on appeal. *Vanvabry v. Staton*, 88 Tenn. at 351, 12 S.W. at 791; *Churchwell v. Callens*, 36 Tenn. App. at 131, 252 S.W.2d at 137. Erroneous orders must be followed until they are reversed. *Blair v. Nelson*, 67 Tenn. (8 Baxt.) 1, 5 (1874). However, an order entered without either subject matter jurisdiction or jurisdiction over the parties is void and cannot provide the basis for a finding of contempt. *Brown v. Brown*, 198 Tenn. 600, 610, 281 S.W.2d 492, 497 (1955); *Howell v. Thompson*, 130 Tenn. 311, 323-24, 170 S.W. 253, 256 (1914). Naturally, the determination of whether a particular order is lawful is a question of law.

The second issue involves the clarity of the order alleged to have been violated. A person may not be held in civil contempt for violating an order unless the order expressly and precisely spells out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden. *Sanders v. Air Line Pilots Ass'n Int'l*, 473 F.2d 244, 247 (2d Cir. 1972); *Hall v. Nelson*, 282 Ga. 441, 651 S.E.2d 72, 75 (2007); *Marquis v. Marquis*, 175 Md. App. 734, 931 A.2d 1164, 1171 (2007); *Cunningham v. Eighth Judicial Dist. Ct. of Nev.*, 102 Nev. 551, 729 P.2d 1328, 1333-34 (1986); *Petrosinelli v. People for the Ethical Treatment of Animals, Inc.*, 273 Va. 700, 643 S.E.2d 151, 154-55 (2007). The order must, therefore, be clear, specific, and unambiguous. *See Doe v. Bd. of Prof'l Responsibility*, 104 S.W.3d at 471; *Long v. McAllister-Long*, 221 S.W.3d at 14.

Vague or ambiguous orders that are susceptible to more than one reasonable interpretation cannot support a finding of civil contempt. *City of Gary v. Major*, 822 N.E.2d 165, 170 (Ind. 2005); *Judge Rotenberg Educ. Ctr., Inc. v. Comm'r of Dep't of Mental Retardation*, 424 Mass. 430, 677 N.E.2d 127, 137 (1997); *Ex parte Slavin*, 412 S.W.2d at 45. Orders need not be "full of superfluous terms and specifications adequate to counter any flight of fancy a contemner may imagine in order to declare it vague." *Ex parte Blasingame*, 748 S.W.2d 444, 446 (Tex. 1988) (quoting *Ex parte McManus*, 589 S.W.2d 790, 793 (Tex. Civ. App. – Dallas 1979)). They must, however, leave no reasonable basis for doubt regarding their meaning. *Int'l Longshoremen's Ass'n, Local No. 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 76, 88 S. Ct. 201, 19 L. Ed. 2d 236 (1967); *Salt Lake City v. Dorman-Ligh*, 912 P.2d 452, 455 (Utah Ct. App. 1996).

Orders alleged to have been violated should be construed using an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order, including the audience to whom the order is addressed. *United States v. Bernardine*, 237 F.3d 1279, 1282 (11th Cir. 2001); *United States v. Young*, 107 F.3d 903, 907-08 (D.C. Cir. 1997). Ambiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge. *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006); *Levin v. Tiber Holding Corp.*, 277 F.3d 243, 251 (2d Cir. 2002); *Town of Virgil v. Ford*, 184 A.D.2d 901, 585 N.Y.S.2d 559, 560 (1992); *Greene v. Finn*, 153 P.3d at 951. Determining whether an order is sufficiently free from ambiguity to be enforced in a contempt proceeding is a legal inquiry that is subject to de novo review. *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir. 1991); *In re Leah S.*, 284 Conn. 685, 935 A.2d 1021, 1027 (2007); *City of Wisconsin Dells v. Dells Fireworks, Inc.*, 197 Wis.2d 1, 539 N.W.2d 916, 924 (1995).

The third issue focuses on whether the party facing the civil contempt charge actually violated the order. This issue is a factual one to be decided by the court without a jury. *See Pass v. State*, 181 Tenn. 613, 620, 184 S.W.2d 1, 4 (1944);

Sherrod v. Wix, 849 S.W.2d 780, 786 (Tenn. Ct. App. 1992). The quantum of proof needed to find that a person has actually violated a court order is a preponderance of the evidence. *Doe v. Bd. of Prof'l Responsibility*, 104 S.W.3d at 474. Thus, decisions regarding whether a person actually violated a court order should be reviewed in accordance with the standards in Tenn. R. App. P. 13(d).

The fourth issue focuses on the willfulness of the person alleged to have violated the order. The word "willfully" has been characterized as a word of many meanings whose construction depends on the context in which it appears. *Spies v. United States*, 317 U.S. 492, 497, 63 S. Ct. 364, 87 L. Ed. 418 (1943); *United States v. Phillips*, 19 F.3d 1565, 1576-77 (11th Cir. 1994). Most obviously, it differentiates between deliberate and unintended conduct. *State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Group Trust*, 209 S.W.3d at 612. However, in criminal law, "willfully" connotes a culpable state of mind. In the criminal context, a willful act is one undertaken for a bad purpose. *Bryan v. United States*, 524 U.S. 184, 191, 118 S. Ct. 1939, 141 L. Ed. 2d 197 (1998); *State v. Braden*, 867 S.W.2d 750, 761 (Tenn. Crim. App. 1993) (upholding an instruction stating that "[a]n act is done willfully if done voluntarily and intentionally and with the specific intent to do something the law forbids").

In the context of a civil contempt proceeding under Tenn. Code Ann. § 29-9-102(3), acting willfully does not require the same standard of culpability that is required in the criminal context. *State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Group Trust*, 209 S.W.3d at 612. Rather, willful conduct

> consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent. Conduct is 'willful' if it is the product of free will rather than coercion. Thus, a person acts 'willfully' if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing.

State ex rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Group Trust, 209 S.W.3d at 612 (citations omitted). Thus, acting contrary to a known duty may constitute willfulness for the purpose of a civil contempt proceeding. *United States v. Ray*, 683 F.2d 1116, 1127 (7th Cir. 1982); *City of Dubuque v. Iowa Dist. Ct. for Dubuque County*, 725 N.W.2d 449, 452 (Iowa 2006); *Utah Farm Prod. Credit Ass'n v. Labrum*, 762 P.2d 1070, 1074 (Utah 1988). Determining whether the violation of a court order was willful is a factual issue that is uniquely within the province of the finder-of-fact who will be able to view the witnesses and assess their credibility. Thus, findings regarding "willfulness" should be reviewed in accordance with the Tenn. R. App. P. 13(d) standards.

Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth., 249 S.W.3d 346, 354-57 (Tenn. 2008) (footnotes omitted). In *Konvalinka*, our Supreme Court held that an order entered by this Court to stay "all proceedings below…" was neither broad enough nor specific enough to encompass a stay of a separate proceeding under Tenn. Code Ann. § 10-7-505(a) to obtain public records even though many of the records sought in the second action were the same records sought in the initial action. *Id*. at 359.

In the Agreed Temporary Order entered in the instant case, the Trial Court ordered, *inter alia*, that:

> THE DEFENDANT, HER TENANTS, THEIR GUESTS OR OTHER INVITEES AT THE 120 NORTH KINGSTON AVENUE PROPERTY ARE HEREBY PROHIBITED AND RESTRAINED FROM TRESPASSING OR ENCROACHING ON THE PLAINTIFF'S PROPERTY PROVIDED HOWEVER THAT THEY MAY CONTINUE TO USE THE DRIVEWAY BETWEEN THE PROPERTIES AT 120 NORTH KINGSTON AVENUE AND 116 NORTH KINGSTON AVENUE TO ACCESS THE REAR OF THE 120 NORTH KINGSTON AVENUE LOT FROM KINGSTON AVENUE. THIS PROHIBITION SHALL INCLUDE PARKING DIRECTLY IN THE DRIVEWAY OR OTHERWISE OBSTRUCTING IT.

The evidence in the record on appeal shows that Defendant did not violate the Agreed Temporary Order by trespassing or encroaching herself on Plaintiff's property. Instead, the evidence shows that Defendant's tenants, their guests or other invitees violated the Agreed Temporary Order by trespassing or encroaching on Plaintiff's property. The Agreed Temporary Order, however, does not expressly and precisely inform Defendant that she will be held in contempt if her tenants, their guests or other invitees violate the order. Given this, in light of our Supreme Court's holding in *Konvalinka*, we reluctantly hold that the Agreed Temporary Order was not sufficiently clear, specific, and unambiguous so as to support a finding of civil contempt on the part of Defendant based on the actions of her tenants, their guests and other invitees. We, therefore, vacate the finding that Defendant was in contempt.

We next consider whether the Trial Court erred in allowing Plaintiff to stop his vehicle in the driveway to open a gate should Plaintiff erect a fence on his property as specified by the Trial Court when the Trial Court held that the joint easement was for the movement of vehicles only. Defendant argues, in part, that no proof was presented regarding a need to stop to open a gate and that the judgment extends "beyond both the scope of the pleadings and the proof [and, therefore,] this portion of the decree should be overturned." We disagree. The Trial Court's order sets out where Plaintiff may place a fence and, pursuant to our discussion above, we find and hold that the language allowing Plaintiff to stop his vehicle in the driveway to open a gate, along with the language allowing either party to pause for a reasonable time to allow them to safely enter traffic on Kingston Avenue, "expressly and precisely spells out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden." *Konvalinka*, at 355. We find no error in the inclusion of this language in the Trial Court's order.

Finally, we consider whether the Trial Court erred in prohibiting Defendant's tenants from parking on property owned by the City in front of Plaintiff's house. Plaintiff attempted to testify that it was illegal to park on the City-owned property in front of his house, but Defendant objected and the Trial Court sustained the objection. Therefore, there is no proof in the record regarding this issue. Given this, it was error to define a violation to include parking on the City owned property in front of Plaintiff's house.

Given the above, we vacate the Trial Court's January 4, 2008 order and remand this case to the Trial Court for entry of a new order that comports with our Opinion and the Supreme Court's Opinion in *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346 (Tenn. 2008). Such an order on remand should expressly and precisely spell out the details of compliance in a way that will enable Defendant to know what actions are required or forbidden of her, including her responsibilities as to her tenants, guests, and other invitees.

Conclusion

The judgment of the Trial Court is vacated and this cause is remanded to the Trial Court for entry of an order that comports with our Opinion and the Supreme Court's Opinion in *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346 (Tenn. 2008), and for collection of the costs below. The costs on appeal are assessed one-half to the Appellant, Wilma Walker and her surety; and one-half to the Appellee, William David McLarty.

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D. MICHAEL SWINEY, JUDGE